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1941 File No. O. Munic Dist: /41

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Legal DEPARTMENT
4 BRANCH

Subject:—

Opinions under the
Bombay District Municipal Act, 1901.

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Stl. Sectt. Slip 24 B e.

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S.I./16.5.56. 50.

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S.I./16.5.56. .0.

It is not clear from the papers whether Mr.Shah was elected at the general election or at a by-election. Section 17(2) of the Bombay District Municipal Act, 1901, provides that the term of office of a councillor elected at a general election commences on the date of the first general meeting while section 18 provides that a person elected at a by-election to fill a casual vacancy will hold office for the remaining period i.e. his term of office commences as soon as he is elected. Consequently the resignation before the commencement of his term of office of a person elected at a general election would not be considered to be before the expiry of his term of office under section 18 while that of the person elected at a by-election though tendered immediately after election would be before the expiry of his term of office. The difficulty pointed out in the present case would not arise if Mr.Shah was elected at a special election. On the assumption however that Mr.Shah was duly and finally elected at a general election the correct position would seem to be that Mr.Shah was a councillor only in name when he submitted his resignation on the day following his election. Under sub-section (2) of section 17 the term of office of councillors elected at the general election shall be deemed to commence on the date of the first general meeting which shall be held after such election and after the expiry of the term of the outgoing councillors at which a quorum shall be present. Thus though a person may be duly elected a councillor he cannot act as such until after the commencement of his term of office. Moreover, section 15A contemplates resignation of a councillor of his office. The resignation which Mr.Shah tendered was one prior to the commencement of his term of office and is therefore not a valid resignation within the strict meaning of section 15A. It will not be correct to treat the resignation as one causing a casual

vacancy. Unless Mr.Shah tenders a fresh resignation after the first general meeting or becomes otherwise disqualified under section 15(2)(e) after the commencement of his term of office, there will be no vacancy which the Act recognises and the question of holding of any election vice Mr.Shah will not arise.

sd/- P.N.Moos.
Remembrancer of Legal Affairs.

U.R. to G.D. No.489 dated the 20th January, 1941.

S.I./15.5.56. 4c.

The question for consideration is whether the by-law 47-A framed by the Ghatkopar-Kirol Municipality is intra vires of section 48(1) (r) of the Bombay District Municipal Act, 1901. The proposed by-law reads as follows:-

"47½A. After the completion of the privy, the owner shall communicate this fact to the Chairman, Managing Committee, and no person shall commence to make use of the privy unless he or she obtains a written order to that effect from the Chairman, Managing Committee.

2. The powers of the Municipality relating to privies are set out in the Act. Under section 99(1) all privies within the municipal district are under the survey and control of the Municipality. Under section 106(3) the Municipality may by a written notice require the owner or occupier of any land upon which there is a privy, to have such privy shut out, by a sufficient roof and a wall or fence, from the view of persons passing by or resident in the neighbourhood, or to alter as they may direct any privy door or trap door which opens on to any street, and which they deem to be a nuisance. Section 107(1) provides that all privies within the municipal district shall, unless contructed at the cost of the Municipality, be altered, repaired, and kept in proper order at the cost and charges of the owners of the land and buildings to which the same belong, or for the use of which they are constructed or continued, and the Municipality may by written notice require such owner to alter, repair, and put the same in good order in such manner as they think fit. Sub-section (2) lays down that the Municipality may by written notice require the owner to demolish or close any privy, whether constructed before or after the coming into operation of this Act, which in

the opinion of the Municipality is a nuisance. or is so constructed as to be inaccessible for the purpose of scavenging or incapable of being properly cleaned or kept in good order. Under section 109 the Municipality may by written notice require that any privy on any land within municipal limits constructed, rebuilt or unstopped·

(a) after such land became part of a municipal district, and

(b) either without the consent or contrary to the orders, directions or general regulations or by-laws of the Municipality or contrary to the provisions of any enactment in force at the time when it was so constructed, rebuilt or unstopped,

shall be demolished, amended or altered, as they may deem fit, by the person by whom it was so constructed, rebuilt or unstopped and every person so constructing, rebuilding or unstopping any such privy, whether he does or does not receive such notice or does or does not comply therewith shall, in addition to any penalty to which he may be liable on account of such non-compliance, be punished with fine which may extend to twenty-five rupees. Section 111 provides that the Municipality or any officer appointed by them for such purposes may, subject to the restrictions of this Act, inspect any privy. Section 48 lays down that every Municipality may from time to time, with the previou sanction, in the case of City Municipalities, of the Provincial Goverment or in other cases of the Commissioner, make, alter or rescind by-laws, but not so as to render them inconsistent with this Act. By-laws can be framed under clause (m) for regulating sanitation and conservancy and under clause(r) for regulating, in any other particular not specifically provided for in this Act, the construction, maintenance and control of privies of every description whether the property of the Municipality or not. It is thus manifest from these provisions that the powers of the

Municipality to control privies are extensive. By-law 47-A has apparently been framed with the intention to enable the Municipality to satisfy itself that the privy is contructed in conformity with the building and sanitary requirements prescribed by it and also to avoid the necessity of using the powers conferred upon it by the Act in case the privies constructed by the owners or occupiers contravene the building and sanitary requirements or are otherwise objectionable. The by-law appears, therefore, to be intra vires of section 43(1) (r). The powers under this section are wide enough and would appear to include the power to make rules regulating the procedure to be followed before a privy can be put to use by any owner. Such a power is incidental to the regulation, construction, maintenance and control of privies.

3. Adverting to paragraph 4 of Commissioner, N.D's letter it would certainly be advisable to fix a time limit within which the Managing Committee should issue the permission for the use of the privy, after receipt of communication from the owner about the completion of the privy. It is however for the Administrative Department to decide what the time limit should be. I also agree that the intention of the by-law would be better expressed by the wording of by-law No.8 in the Vile Parle By-laws sanctioned by the Commissioner in 1933.

Sd/- P.N.Moos.

Remembrancer of Legal Affairs.

U.R. to C.D. No.792, dated the 28th January 1941.

S.I./15.5.56. 4c.

Submitted.

P.3 ante

From the letter of the President, Ghatkopar-Kirol Municipality dated 25.1.41 it appears that one Mr.Pralhadbhai Keshavlal, a councillor of the Municipality was convicted and sentenced to six months' simple imprisonment by the F.C.Resident Magistrate, Kurla. The President requested the collr, B.S.D to inform him whether a vacancy had occurred.

P.1 ante

In his letter No.M.U.N. 15-G.K, dated 30.1.41, The Collr, B.S.D. holds that Mr.Prahladbhai Keshavlal is disabled from ~~xxxxxx~~ continuing to be a councillor of the Municipality under section 15(2) (a) of the Bombay District Municipal Act, 1901. He, however, doubts whether it can be the intention that under the proviso to section 15(3) of the Act an opportunity of being heard should be given to a person who has incurred disqualification by a sentence of imprisonment. He has, therefore, raised the question whether in view of the proviso to section 15(3), the prisoners who wish to be heard in person should be brought specially from jail for that purpose.

P- 2 ante

The Commr. N.D. is of opinion that so long as the Act is not amended so as to exclude such cases from the scope of proviso to section 15(3), the Collr. cannot pass his order without giving the member a reasonable opportunity of being

heard.

2. The questions for consideration of the R.L.A. are not clearly stated. However they appear to be:- Pp.5-6 ante

(1) Whether it is necessary that under the proviso to section 15(3) of the Bombay District Municipal Act, 1901, the councillor who has incurred disqualification by reason of his having been sentenced by a Criminal Court to imprisonment for an offence punishable with imprisonment for a term exceeding six months etc, should be given an opportunity of being ~~here~~ heard;

(2) If so, whether it will suffice if the Collector issues a letter to the councillor in jail and gets the reply by letter or whether it will be necessary that the person should be brought specially from jail before the Collr.

S.I./15.5.56. 4a.

The view taken by the Commissioner, N.D. in paragraph 2 at page 2 ante is legally correct.

2. The proviso to section 15(3) of the Bombay District Municipal Act, 1901 makes the giving of a reasonable opportunity of being heard to the councillor concerned, a condition precedent to the passing of an order by the Collector under that sub-section. Consequently, it is necessary that Mr.Prahladbhai Keshavlal should be given a reasonable opportunity of being heard before the Collector decides that his seat has become vacant by reason of his being sentenced to imprisonment for an offence punishable with imprisonment for a term exceeding six months and the fact of his conviction would be no ground for non-compliance with the specific provisions of the proviso to section 15(3).

3. All that the proviso to section 15(3) requires is that a reasonable opportunity of being heard should be given. It is not therefore necessary that Mr.Prahladbhai Keshavlal should state his objections, if any, in person. It is open to him to do so either in person or through any agency i.e. by appointing any person to plead on his behalf or by merely submitting his statement in writing. The Collector should give Mr. Prahadbhai Keshavlal a notice calling upon him to show cause why his seat should not be declared vacant and may leave it to him to decide in what way, if at all, he desires to be heard.

Sd/-P.N.Moos/4.3.

Remembrancer of Legal Affairs.

U.R. to the G.D.,No.1935 dated the 5th March 1941.

S.I./15.3.56. 40.

Section 59(b) (viii) of the Bombay District Municipal Act, 1901, provides for power of a municipality to levy water rate or water rates for water supplied by the municipality. Rule 1 of the Rules framed by the Karad Municipality under section 46(1) prescribes the water rates in respect of a private water supply. Rule 3 provides for payment of water tax in advance. Rule 4 says:-

"If any person who having paid the first or second instalment of water tax, desires that his supply shall be cut off before the expiry of the period for which the instalment has been paid, he may apply in writing to the Managing Committee who shall take steps, as soon as possible to discontinue the supply and to refund to the applicant half of the instalment if the application was made at least 3 months before the expiry of the period for which the instalment was paid.

The Karad Municipality seems to be relying upon this provision for its claim against Government because Government did not apply to the Municipality in time to discontinue the supply of water in the Civil Court premises. The Municipality's contention does not appear to be valid. Rule 4 applies only when the Municipality can and continues to be willing to supply water and the person having taken the water connection has failed to apply to the Municipality for disconnecting the supply. In the present case the Municipality was admittedly quite unable to supply any water whatsoever. Consequently rule 4 has no application to the present case. The words "for water supplied" in section 59(b) (viii) clearly indicate that the water rate is intended for the benefit conferred and consequently the Karad Municipality could not lawfully levy any water rate when in fact it could not supply any water at all. (see I.L.R. 3 Mad.201). Even under the Rules of the

Karad Municipality a distinction is ~~ma~~ drawn between a "general water-tax" and the "rate for the supply of water to private houses". The rates in rule 1 in Part I under which the present claim appears to have been maintained relate to private water supply and can, in law, create no liability at all when as a matter of fact the Municipality has not supplied any water even though the pipe connection is left intact. In the absence of supply there can arise no liability in respect of a rate leviable for such supply.

2. Even assuming that the Karad Municipality was entitled to levy a water rate inspite of its inability to supply water, the Municipality would be liable to an action for compensation for failure to supply water. The legal position should therefore be explained to the Municipality and if the Municipality still insists on payment and files a suit, Government would be able to resist the claim on the ~~ma~~ ground of total failure of supply of water and even to make, in the alternative, a counter claim for compensation.

Sd/- L.E.Kops/24.4

Remembrancer of Legal Affairs.

U.R. to H.D. No.3654, dated the 25th April 1941.

S.I./15.5.56. 4c.

In Emperor vs. Shirinbai Sorabji (42 B.L.R.1060) the High Court has held that under section 43 of the Bombay District Municipal Act, 1901, for making by-laws under that section, it is necessary that a Municipality should pass a resolution adopting the by-laws after they are approved by the Commissioner. The question referred to the Remembrancer of Legal Affairs for consideration is whether in the case of Municipalities who have not passed such resolutions after the by-laws are approved by the Commissioner or Government, as the case may be, under section 46 of the Bombay District Municipal Act, 1901, or the corresponding provision in section 61 of the Bombay Municipal Boroughs Act, 1925, it is competent to the Municipalities to pass such resolutions now adopting the by-laws with retrospective effect from the dates on which they have already been put into operation.

2. The question whether by-laws can be made with retrospective effect under an enactment has been considered in R.L.A's opinion No.173-Confl., dated 23rd January 1935, the Advocate General's opinion No.26, dated 30th July 1935, and the R.L.A's further opinion No.671, dated 16th February 1937. For reasons stated in those opinions which I endorse it is not competent for any authority to make by-laws with retrospective effect unless the Act under which the by-laws are to be made expressly confers such power to make by-laws with retrospective effect on such authority.

3. Since the by-laws in most cases have already been in operation for a long time, it will be necessary for Government to pass suitable validating legislation to meet the requirements of each Municipality.

sd/- P.N.Moos/15/4

Remembrancer of Legal Affairs.

U.R. to G.D. No.3242 dated the 17th April 1941.

S.I./15.5.56. 4c.

By Government Notification, General Department No.6805 dated 3rd June 1940 issued under section 190(2) of the Bombay District Municipal Act, 1901 Government cancelled, with effect from 1st November 1940, Notification No.6850(a) dated 8th August 1927 and other subsequent Notifications issued under the provisions of sections 187 and 188 of the said Act. As a result of the said Notification, the Notified Area of Lonand ceased to be a Notified Area with effect from 1st November 1940 (vide section 191(1) of the Act). In Government Notification, General Department No.518/33 dated 11th July 1940 issued under section 4(1) of the Bombay Village Panchayats Act. 1933 Government declared that the local area comprising the revenue village of Lonand shall be a "village" with effect from 1st November 1940. As, however, the village panchayat established at Lonand could not commence functioning till 2nd March 1941, the collector allowed the Notified Area Committee, Lonand, to function till 2nd March 1941 for the benefit of the inhabitants of the said area. The Notified Area Committee ceased as such on 1st November 1940, and its property and rights vested in His Majesty under section 191(1) of the Bombay District Municipal Act, 1901. The administration of the property by the members of the defunt Committee from 1st November 1940 to 2nd March 1941 under the directions of the Collector can be deemed to have been for the benefit of the inhabitants of the area and on behalf of the Provincial Government. It may therefore be regarded as valid under the provisions of section 191(3) of the said Act. and no regularisation is strictly necessary. It is however desirable for Government to pass an order approving the Collector's action in administering the property from 1st Novemner 1940 to 2nd March 1941 through the agency of the members of the said Committee.

2. As regards the transfer of the said property to the village Panchayat, the Panchayat is competent to acquire the same under sections 29 and 31(2) (a) of the Bombay Village Panchayats Act, 1933. It is also competent for Government to transfer the property to the Panchayat under section 191 of the Bombay district Municipal Act, in view of the specific provision in section 32 of the Bombay Village Panchayats Act, that the property on becoming vested in the Panchayat shall be applied for the purposes of the Act, namely for the benefit of the inhabitants of the area concerned. The G.D. view on this point as page 6 ante is correct.

Sd/- P.N.Koos/6/5

Remembrancer of Legal Affairs.

U.R. to G.D. No.4130, dated the 7th May 1941.

S.I./15.5.56. 40.

The questions raised by General Department for consideration of the Remembrancer of Legal Affairs are:-

(1) Whether under section 59(x) of the Bombay Municipal District Act, 1901, and section 73(xii) of the Bombay Municipal Boroughs Act, 1925, the pilgrim tax can be levied on all persons visiting the place of pilgrimage, irrespective of their religion, or whether such a tax cannot be levied on non-Hindus during a Hindu pilgrimage and vice-versa;

(2) Whether non-Hindus coming to the place of pilgrimage for some work other than religious but directly connected with pilgrimage e.g. hawkers, jugglers, etc. are liable to pay the pilgrim tax;

(3) Whether any section of the Hindus, such as Harijans, who do not choose to perform or are prevented from performing all or any of the religious ceremonies, can claim to be exempted from payment of the tax in the absence of specific rules.

2. Question No.(1) - Statutes which impose pecuniary burdens are subject to the rule of strict construction. It is a well settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalties. A subject is not to be taxed unless the language of the statute clearly imposes the obligation. In a case of reasonable doubt the construction most beneficial to the subject is to be adopted. (See Maxwell, pages 250-251). Section 59(x) of the Bombay District Municipal Act, 1901, and section 73(xii) of the Bombay Municipal Boroughs Act, 1925, are in similar terms and they provide for power of a municipality to impose a tax on pilgrims resorting periodically to a shrine within the limits of the municipality. The words "pilgrim" and "shrine" have not been defined in the Acts and consequently are to be given their ordinary meaning. "Pilgrim" is "one who journeys to a sacred place as an act of religious devotion", and "Shrine" means "casket esp. one holding sacred

relics; tomb usually sculptured or highly ornamented of saint, etc.; altar or chapel of some special associations; place hallowed by some memory" (see the Concise Oxford Dictionary of Current English). It is therefore clear that a municipality is entitled to impose a pilgrim tax on those who visit as an act of religious devotion a particular shrine within its limits. Consequently the pilgrim tax can be imposed on all persons who journey to a sacred place as an act of devotion irrespective of the religious faith they profess.

3. Question No.(2) - Non-Hindu hawkers, jugglers, etc., who visit the place of pilgrimage for some work other than religious but directly connected with the pilgrimage will not be liable to pay the pilgrim tax unless they resort to the shrine as stated above.

4. Question No.(3) - As stated above what appears necessary to make a person ~~not~~ liable to pay the pilgrim tax is that he must resort to the Shrine with religious devotion; it is immaterial whether such person actually does not perform or is not permitted to perform any of the religious ceremonies.

Sd/- P.N.Koos/24/5.
Remembrancer of Legal Affairs.

U.R. to C.D. No.4808, dated the 26th May 1941.

S.I./15.5.36. 4c.

relics; tomb usually sculptured or highly ornamented of saint, etc.; altar or chapel of some special associations; place hallowed by some memory" (see the Concise Oxford Dictionary of Current English). It is therefore clear that a municipality is entitled to impose a pilgrim tax on those who visit as an act of religious devotion a particular shrine within its limits. Consequently the pilgrim tax can be imposed on all persons who journey to a sacred place as an act of devotion irrespective of the religious faith they profess.

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4. Question No.(3) - As stated above what appears necessary to make a person ~~not~~ liable to pay the pilgrim tax is that he must resort to the Shrine with religious devotion; it is immaterial whether such person actually does not perform or is not permitted to perform any of the religious ceremonies.

sd/- P.N.Koos/24/5.
Remembrancer of legal Affairs

U.R. to G.O. No.4803, dated the 26th May 1941.

G.I./15.5.56. 4c.

Office of the R.L.A.

It is true as pointed out by the Commissioner in his letter at page 1 ante that there is a conflict between the Remembrancer of Legal Affairs' two opinions No.3, dated the 4th January 1915 and No.1273, dated the 6th April 1927. But in a later opinion No.533, dated the 28th January 1937 the same question was fully considered by the Remembrancer of Legal Affairs. For the reasons stated therein a license fee levied under section 70 read with section 46(j) of the Bombay District Municipal Act, 1901, is not one of the taxes specified in section 59 and therefore it is not necessary to follow the procedure laid down in section 60. R.L.A's opinion No.1273, dated the 12th April 1927 may be considered to be no longer valid.

sd/-P.M.Moos/13/5.

Remembrancer of Legal Affairs.

U.R. to the G.D. No.4413 dated the 14th May 1941.

G.I./15.5.66. 40.

The question on w hich the Remembrancer of Legal Affairs' opinion is requested seems to be:-

Whether a special notice of demand under section 15(2) (f) of t he Bombay District Municipal Act, 1901, should be preceded by a notice of demand under section 82(1) in Chapter VIII. On this point there are two former opinions of the R.L.A. In the opinion No.O.Munis.Cities 23 dated 20th December 1928 the R.L.A. (Mr.Balak Ram) took the view that notice under section 28(1) (e) of the Bombay Municipal Boroughs Act, 1925 was called a special notice because it could only be issued as a last resort after a bill and notice under section 104 had been served in the first instance. This opinion is not quite in keeping w ith the opinion No.O.Munis.cities 15 dated 23rd July 1928 where the R.L.A. (Mr.Alison) held; "section 28(1) (e) of t he Bombay Municipal Boroughs Act, 1925 (which is similar to section 15(2) (f) of t he Bombay District Municipal Act, 1901) provides for a disability from continuining to be a councillor when a councillor makes default in paying the arrears due by him to the municipality. This is a special provision affecting the qualifications of defaulting councillors and is not a provision for recovery of arrears. It has no connection w ith Chapter VIII (which is similar to ChapterVIII of the Bombay District Municipal Act) and there is nothing in the Act to suggest that the issue of a special notice must be proceded by an attempt under that chapter to recover arrears due Of the two apparently inconsistem opinions, that of Mr.Alison seems well grounded and preferable. There is nothing in the Act to support Mr.Balak Ram's interpretation of t he term "special Notice 2. What is necessary for disqualification under section 15(2) (f) of t he Bombay District Municipal Act and section 28(1) (e) of the Bombay Municipal Boroughs Act is that there

must be some arrears which the councillor has failed to pay within three months after special notice. "Arrears" mean money not paid on the due date or proper time for payment or that which is behind in payment or which remains unpaid though due. The definition of "arrears" involves the idea not merely of money unpaid but of money unpaid at the due time. The term "arrears" involves the existence of some default on the part of the debtor. Iyer's Law lexicon; 35 Cal. 34 at pp.42 and 58) As observed by Jarvis C.J. in Davis vs. Barrel (1851, 10 C.B.821 at p.826) "When a rate is duly made and published, it is the duty of the parties assessed to seek out the Collector and to pay it. The Statute 43 Eliz. C. 2 requires a personal demand before the rate can be distrained for. That shows that a demand would otherwise be unnecessary Apart therefore from the statutory requirement for a demand in the case of an attempt to recover by distress warrant payment of a rate which should have been but has not been paid, there is no requirement for a demand (see Aiyangar's Law of Municipal Corporation in British India pp.282, 283) It is clear from the provisions of Chapter VIII of the Act that the presentation of a bill and the issue of a notice of demand are necessary only for purposes of recovering the taxes by distraint. It follows therefore that the rates became due for recovery as soon as they are validly levied whereafter on non-payment they become arrears and it is the duty of the assessees to pay them without waiting for presentation of bills and issue of notices of demand. It is clear from the letter of the Commissioner at page 1 ante that in the present case the house tax of the Chopda Municipality became due as usual on 1st April. Consequently owing to non-payment the house tax due from all the councillors fell into arrears on 1st April. Hence under section 16(2) (f) a special notice was validly issued by the President for payment of the arrears. Two of the councillors did not pay the dues within three months from the service of the special notice. It was upto the

defaulting members to prove if necessary that the notice was invalid as not being in respect of any arrears; in other words that there were no dues owing by them to the municipality as demanded. If they proved as above under section 15(3), the disqualification under section 15(2) would be inapplicable. In the absence of such proof, however, the view taken by the Collector and confirmed in appeal by the Commissioner does not appear to be correct.

Sd/- P.N.Koos/20/5
Remembrancer of Legal Affairs.

U.R. to G.D. No.4606, dated the 21st May 1941.

S.A./15.5.56. do.

It appears that the properties in respect of which the arrears are due to the Dharangaon Municipality do not stand in the names of the councillors but in the names of other members of their joint families. The question for consideration of the R.L.A. is whether these councillors are liable to be disabled from continuing to be members under section 15(2) (f) of the Bombay District Municipal Act, 1901.

2. Section 15(2) (f) of the Bombay District Municipal Act, 1901, provides that if any councillor during the term for which he has been elected or appointed fails to pay any arrears of any kind due by him to the Municipality within three months after a special notice in this behalf has been served upon him, he shall, subject to the provisions of sub-section (3), be disabled from continuing to be a councillor and his office shall become vacant. Section 68 inter alia provides that every tax imposed in the form of a rate on buildings or lands or on both shall be leviable primarily from the actual occupier of the property upon which the said taxes re-assessed, if he is the owner of the buildings or lands; and under section 63(1) the names of the owner and occupier if known are required to be entered in the assessment list. Consequently the arrears in the present case are primarily leviable from the persons whose names are entered as owners and occupiers in the assessment list and not from the councillors although these councillors happen to have an interest in the properties as members of joint Hindu families. The arrears cannot, therefore, be said to be due by the councillors to the Municipality within the meaning of section 15(2) (f). Moreover, section 15(2) (f) is a special provision affecting the qualification of defaulting councillors and is not a provision for recovery of arrears (R.L.A's opinion No. C.Munis.Cities-15, dated 23rd July 1928, followed in R.L.A's opinion No.4696, dated 31st May 1941). Consequently the question whether or not these councillors

would, as members of joint Hindu families, be liable to pay the arrears even though the properties in respect of which the arrears have become due do not stand in their names, would not be relevant for purposes of section 15(2) (f). No action would, therefore, be legally feasible against these councillors under section 15(2) (f). The view taken by the Commissioner in his letter at page 1 ante is correct.

Sd/- P.N. Moos/23/6.

Remembrancer of Legal Affairs.

U.R. to G.D. No.5619, dated the 25th June 1941.

S.I./ 15.5.56. 4c.

Submitted. R.I. No.5343/16-6-1941.

Mr. J.P.Parekh, President of the Ghatkopar-Kirol Municipality, tendered resignation of the Presidentship on 2-5-1941. The Collr., B.S.D., therefore, issued a notice under sec. 23(13) of the Bom. District Municipal Act, 1901, calling upon the Councillors of the Municipality to elect a President in place of Mr.Parekh. An election was accordingly held on 24-5-41 when Mr.J.P. Parekh was again elected President. As subsection (13) of sec.23 requires the election of "some other Councillor" to the post of the President the following questions are raised for the consideration of the R.L.A.:-

(1) whether the election of Mr.J.P.Parekh as President is illegal?

(2) whether the Collr. can suspend the execution of the resolution dated 24-5-41 under sec.174(1) of the B.B.M. Act; and

(3) Whether the vacancy will have to be filled within twenty five days of the declaration of Mr.Parekh's election as illegal.

Office of the R.L.A.

The views expressed in paragraphs 3 and 4 of G.D. office note at page 13 ante are correct.

Sd/-F.E.Moos/23/6.
Remembrancer of Legal Affairs.
Sd./23/6/41.

U.R. to G.D. No.5621, dated the 25th June 1941.

S.I./16.5.56. 4c.

Office of the R.L.A.

The order passed by the Commissioner in appeal under section 15(3) of the Bombay District Municipal Act, 1901, in the present case, though incorrect, cannot be said to have been passed without jurisdiction. The order being final, it can neigher be revised by Government under section 180 nor reviewed by the Commissioner (see R.L.A's Opinion No. 6052, dated 4th November 1936; cf.R.L.A's opinion 1160, dated 30th January 1939; Kalu v. Secretary of State, 50 B.L.R.1404 on the interpretation of "finality of an order" and R.L.A's opinion No.2280, dated 14th March 1941).

2. The amendment of section 15(3) of the Bombay District Municipal Act has introduced no change in respect of the finality of the Commissioner's order.

S/7.N.Moos/16/7.
Remembrancer of Legal Affairs.
Gd./16/7/41.

U.R. to G.D., No.6291, dated the 18th July 1941.

S.I./15.8.56. 4c.

G.D. wants to know whether the pilgrim tax is leviable on those who visit a shrine inside a town or on those who visit the town itself, the visit in either case being made with religious devotion. This was already considered by R.L.A. in paragraph 2 of his opinion No.4808, dated 26th May 1941, when he advised that a "shrine" can mean "a place hallowed by some memory" Hence if the town itself is so hallowed, as for instance Benares or Rameshwaram or Pandharpur, the town as a whole is a Kshetra or a place of pilgrimage, i.e. a shrine. There is therefore no conflict between paragraphs 2 and 4 of the R.L.A's aforesaid opinion which fully answers the point now raised by G.D.

Sd/-P.M.Joos/15.7

Remembrancer of Legal Affairs.

D.15/7/41

U.M. to G.D., No.6225, dated the 17th July 1941.

S.I./16.5.56. 4c.

The provisions of section 26(7) of the Bombay District Municipal Act, 1901, apply to a meeting held under section 23(13) of the Act, subject to any special provisions of the latter section. (See R.L.A's opinion No.3-U, dated 26th April 1916 and R.L.A's opinion No.4567, dated 21st August 1934) Section 26(7) requires a quorum of one half of the whole number of councillors at a meeting of the Indapur Municipality. The words "whole number of councillors" refer to the number determined under section 11(1) of the Act (see Cumming's Bombay District Munical Manual at page 108 and 21 All.348 at p.350). The number determined in respect of Indapur Municipality under section 11(1) is stated to be 15; consequently the quorum for a meeting of the Municipality under section 26(7) is 8. The election of Mr.Joshi as President held on 2nd April 1941 is therefore liable to be challenged for want of a quorum at the meeting, only 7 councillors having attended.

4. The next question for consideration is whether action under section 174(1) would be lawful. The election of a President is a statutory duty and an act complete in itself. It is not an order or resolution of a Municipality the execution of which is unlawful under section 174(1) of the Bombay District Municipal Act, (cf.R.L.A's Opinion No.9-Local Boards &c, dated the 15th August 1923). Consequently it would not be lawful to take action under section 174(1). There is no power vesting in the Collector or Government to set aside the election of Mr.Joshi. The only authority that can set aside his election is the civil court. (see paragraph 3 of R.L.A's No.4068, dated [illegible] August 1934). Pending the result of any action in the civil Court section 38(1) would apply and the subsequent proceedings of the Municipality would not be vitiated.

Sd/-P.N.Moos/14/8.

Remembrancer of Legal Affairs.

P.R. to G.D. No.722 dated the 16th August 1941.

S.I./16...56. 4c.

Attention of G.D. is invited to A.L.A's opinions No.196 dated 12th January 1937, No.2753 dated 24th May 1937 and No.7140 dated 13th August 1941. As pointed out in these opinions, the deduction of ten per cent from the amount of refund of the terminal tax, made by the Ankleshwar Municipality after 1st April 1937, would amount to the imposition of a new terminal tax. Such a tax in so far as it is levied for the first time after 1st April 1937 on goods carried by rail is illegal. As regards the levy of such a tax on goods carried by road, G.D.'s attention is invited to Advocate General's opinion No.18 dated 24th March 1940.

sd/- [illegible].

Remembrancer of Legal Affairs.

U... to G.D. No.7877 dated the 9th September 1941.

G.I./16.8.56. 4c.

Messrs. Maneklal Ambalal Desai and Chandrakant Parikh, two councillors of the Kapadwanj Municipality, are partners of two firms "Desai Maneklal Ambalal and Company" and "Shamaldas Mansukhram and Company" respectively. It appears that certain goods exceeding in value Rs.500/- were supplied to the Municipality in the names of certain other partners of these firms. The question raised for consideration of the R.L.A. is whether these councillors have incurred disqualification under section 15(2) (a) read with section 15(1) (f) of the Bombay District Municipal Act, 1901. In his letter at page 1 ante the Commissioner, Northern Division, reports:

> "The goods were supplied to the Municipality in the names of individual partners and not in the names of the firms. In the Municipal records also the transactions were shown to be in the names of the individual partners. In the accounts of the firms the value of goods supplied to the Municipality was debited to the account of the partner in whose names the goods were supplied to the Municipality and when payment was made by the Municipality, the amount was credited to the account of the partner".

The fact that the value of the goods when supplied to the Municipality was first debited to the account of the individual partner and later credited to his account when paid by the Municipality appears to have been a mere device for the purpose of circumventing the provisions of section 15(2) (a) read with section 15(1) (f). These are clearly colourable transactions between the firms and the Municipality, they being nominally entered into by the individual partners of the firms. Consequently the councillors Mr.Maneklal Ambalal Desai and Mr.Chandrakant Parikh, who are partners of the firms, must be deemed to have

had directly or indirectly an interest in the contracts of supply of goods to the Municipality within the meaning of section 16(1) (f) of the Bombay District Municipal Act and have therefore incurred disqualification under section 15(2) (a).

Sd/- P.H.Koos/2.10
Remembrancer of Legal Affairs.

U.H. to G.D., No.8685, dated 4th October 1941.

G.I./16.5.56. 4c.

The amount of the terminal tax recovered by the Mahmedabad Municipality in this case is liable to be refunded by it under rule 15 of its terminal tax rules. That rule provides that refunds of the amount paid on imported goods shall be made from the municipal fund in respect of goods declared at the time of the import to be required in fulfilment of a specified contract with a public authority. The rule provides that such refund shall be made to the credit of such public authority. The proviso to the rule requires (a) that such goods shall have vested in such public authority and (b) that a certificate to that effect signed by the officer in charge of the work to which such contract relates shall have been produced. Under rule 2(f) of the rules "public authority" includes Government. The goods in this case were required in fulfilment of the contract entered into by Messrs. S.B.Joshi & Co. with the Government of Bombay for constructing the Vatrak Bridge. It appears from the contractor's letter at page 9 to 11 ante that they had informed the municipality at the time of bringing the goods that the goods were required in fulfilment of a contract with Government. (see A on page 10 ante). Under clause 7 of the agreement between the contractors and Government, all work and materials brought and left upon the site of the work either by the contractors or by their orders for the purpose of forming part of the work are to be considered to be the property of the Governor of Bombay. By virtue of this clause, the goods brought by the contractors in this case can be held to have vested in Government within the meaning of clause (a) of the proviso to rule 15 of the rules. Under clause (b), of the proviso however a certificate to this effect signed by the officer in charge of the work is necessary. The certificate at page 13 ante from the Executive Engineer is vague and therefore not in order. A fresh certificate stating definitely that the goods in question were required in fulfilment of the contract with the Government

of Bombay and that ~~ex~~ they have vested in the Government of Bombay should be signed by the Executive Engineer and sent to the Municipality. In that case, the Municipality will be bound to refund the amount of the tax. It may be pointed out that under the rule the refund shall be made to the credit of Government and not to Messrs. S.B.Joshi & Co. the contractors.

2. Rule 4(a) of the rules will it appears have no application to the facts of the present case as the goods when imported cannot be held to have belonged to or to have been ordered by or on behalf of Government within the meaning of that rule. No exemption could consequently be claimed under this rule from the payment of the tax in respect of the goods in question.

sd/- P.N.Koos/24/10
Remembrancer of Legal Affairs.

U.R. to O.D. No.9244, dated the 27th October 1941.

S.I./16.5.56. 40.

Rule 14(1) of the Rules for the Regulation of Government-Aided Charitable Dispensaries, 1928, provides for sanctioning an annual grant-in-aid for the maintenance of a dispensary and for payment of an amount not exceeding one half of the net cost of maintenance of the dispensary. Sub-rule (2) provides that the estimate of cost of maintaining a dispensary shall include a contribution of Rs.200 per mensem on account of a Bombay Medical Service Officer or Rs.90 per mensem - which is reduced by Rs.2-8-0 per mensem with effect from 1st June 1936 on account of a subordinate medical service officer as the case may be who may be lent by Government, if it is intended to place the dispensary in charge of a Government medical officer. Rule 16(1) lays down that the pay and allowances of subordinate medical service officers and Bombay Medical Service officers will be paid direct from Government treasury and the contribution referred to in rule 14(2) above will be deducted from Government grant at the beginning of the year or if contribution be more than the grant the excess will be recovered from the local body concerned. It appears that in the present case the contribution to be paid by the Malwan Municipality under rule 14(2) was more than the grant fixed under rule 14(1). Consequently Government was entitled to recover the excess from the Municipality under rule 16(1). But the Municipality by its resolution No.2(h) dated the 30th March 1941 declined to pay the excess until Government increased its grant-in-aid under rule 14(1). The resolution, however, did not have the effect of closing down the dispensary and it cannot be held that by reason of such resolution the Municipality has made a default in the performance of its obligatory duty under section 54(1) (o) of the Bombay District Municipal Act, 1901. Rules for the Regulation of

of Government-Aided Charitable Dispensaries, 1928, are not statutory Rules. The passing of the resolution by the Malwan unicipality was not likely to cause injury or annoyance to the public, nor was it unlawful within the meaning of section 174(1) of the Bombay District Municipal Act, 1901. The view taken by the Commissioner, S.D. at page 1 ante is correct.

sd/- P.N.Moos/31/10.
Remembrancer of Legal Affairs.

U.O. to C.D., No.9454, dated the 3rd November 1941.

S.I./16.5.56. 4c.

The question for consideration of the R.L.A. is whether the Commissioner, C.D's order at Pages ~~xxx~~ 5-6 ante is legally free from objection.

2. Section 27(1) of the Bombay District Municipal Act, 1901, provides that in every Municipality there shall be a committee called the Managingf Committee, consisting of such number of councillors not exceeding nine or less than four, as may have been elected for a period not exceeding one year in accordance with the rules under clause (a), section 46. Rule 57 of the Rules framed by the Trimbak Municipality under section 46(a) provides that the Managing Committee and any committee that may be appointed under section 29 shall be appointed for not less than six months. It is presumed that the Managing Committee appointed by the Trimbak Municipality for the year 1940-41 was for one year. In his opinions No.579, dated 14th March 1921 and No.1007, dated 23rd October 1926, the R.L.A. has held that in the absence of any rule rendering the period of a committee's constitution dependent upon the will of the Municipality and in the absence of any authorisation in the Act to discontinue or alter the constitution of the Managing Committee the Municipality has no power to dissolve the Managing Committee before the expiry of its term and section 16 of the Bombay General Clauses Act, 1904, would not seem to apply. The rules of the Trimbak Municipality do not contain any such provision. Consequently it would not have been competent for the Trimbak Municipality to dissolve the Managing Committee before the expiry of the period for which it was appointed. What was true of the Managing Committee was equally true of the Chairman and members of such Committee since their term of office on such Committee would be co-extensive with that of the Committee itself (cf. R.L.A's U.R. to U.D. No.315-Confl., dated 9th December 1940

and U.R. to H.D. No.112-Confl., dated 7th March 1941). It appears therefore that the view taken by the Commissioner that Mr. Marathe could be removed from the Chairmanship and membership of the Managing Committee under section 16 of the Bombay General Clauses Act, 1904, before the expiry of the period for which he was appointed is not correct. *Copy appended.

Sd/- T.N.Moos/6/12.

Remembrancer of Legal Affairs.

U.R. to G.D., No.10575, dated the 9th December 1941.

S.I./16.5.56. 4c.

Office of the R.L.A.

It appears from the endorsement of the Commissioner, Central Division, at page 19 ante that in this case the resolution of the Taloda Municipality was already executed before the collector suspended its execution under section 174(1) of the Bombay District Municipal Act, 1901. Consequently resort to section 174(1) was futile and incompetent since there was nothing subsisting the execution of which could be suspended. See R.L.A's No.10735 dated 12th December 1941 as also the R.L.A's and Advocate General's opinions at pages 57 and 61 of G.D. Confidential File C. Br.1938 No.S 159. The next question as to whether the proceedings were ultra vires as stated by the Collector, does not survive. The Commissioner may rescind the order of the Collector under section 174(2) leaving it to any aggrieved party to take the matter to court if so advised.

Sd/- P.N.Moos/23/12.

Remembrancer of Legal Affairs.

U.R. to G.D. No.11140, dated the 26th December, 1941.

S.I./16.1.56. 4c.